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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,066	03/12/2001	Michael Safdye	0851/01118	7498

7278 7590 10/16/2002

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EXAMINER

STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 10/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/804,066	SAFDEYE ET AL. <i>Ch</i>
	Examiner	Art Unit
	Anthony D Stashick	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 July 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-12, 15-17, 33-36 and 39-42 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 2-12, 15-17, 33-36 and 39-42 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 March 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>12.5_14</u> .	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Specification

1. The amendment filed July 16, 2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The removal of the word "fabric" before the phrase "backing layer" is an addition of new matter to the disclosure. Previously, the applicant defined the backing layer as being a "fabric-backing layer". Since this is how it was disclosed, there was no support in the application as originally filed for the backing layer to be anything but a fabric layer. Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-3, 6-12, 15-17, 33-36 and 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walters 384,483 in view of Clark 2,400,487 and Barma 5,743,027. Walters '483 discloses substantially all the limitations of the claims including the following: an upper (see Figures 1 and 2); a lower (insole a) attached to the upper; an outsole (B) attached to the lower; the outsole (B) having ground contacting surface (b, b¹) sections; the outsole having first section formed of a first material and including a ground contacting portion b,b¹ and a non-ground contacting portion b², b³; the first section being formed of a first material (rubber); the second section (D and C) formed of a fabric

ground contacting material; a gap located between the fabric and first material (Figure 3, first material b does not cover C or D); the first material is rubber which is a shape-retaining moldable thermoplastic material; the bottom most sections of the first and second material are planar with one another (see Figure 7); the fabric material bulges outwardly from the surrounding portions so that the fabric material extends beyond a plane containing the ground contacting surface of the surrounding portions (see col. 2, lines 80-83). The first material having a recess to receive an insert (see Figure 7); the second section occupies an area of the ground greater than that of the first (see Figures); the non-ground contacting portion of the first section completely surrounds the fabric material (inside portion of recesses of Figure 7); the fabric material occupies more than 50% of the ground contacting surface. Walters '483 does not disclose or teach the second section having a backing layer of a thermoplastic material. Clark '487 teaches that a fabric sole can have a rubber-backing layer that attaches to the fabric and attaches the fabric to the lower of a shoe. Barma '027 teaches that a rubber sole can be attached to a rubber sole by vulcanization, i.e. melting of the rubber together. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the fabric sole portion of Walters '483 with a rubber backing layer, as taught by Clark '487, to hold all the fibers together and apply it to the recess as a unit to prevent the fibers from fraying away from each other by vulcanizing the sole to the rubber shoe, as taught by Barma '027.

4. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 3 above in view of Mitchell 1,716,790. The references as applied to claim 1 above disclose all the limitations of the claim except for the fabric material being a non-woven fabric material. Mitchell '790 teaches that a non-slip material made of felt, known to be a non-woven material, can be placed on the bottom of a shoe's sole to aid in preventing the shoe from slipping on surfaces during use. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was

made, to use felt pads, as taught by Mitchell '790, as the cloth sole strips of the references as applied to claim 3 above, to aid in preventing the sole of the shoe from slipping on contact surfaces.

Response to Arguments

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining

groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Tuesday through Friday from 8:30 am until 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Informal Fax for 3728	(703) 308-7769

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line 1-800-786-9199
Internet PTO-Home Page <http://www.uspto.gov/>

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Anthony D Stashick
Primary Examiner
Art Unit 3728

ADS

October 11, 2002